

REMARKS

The applicant's representative thanks Examiner Tarae for the Examiner Telephone Interview on January 9, 2007 regarding potential amendments to put the pending claims in condition for allowance. The amendments in this response reflect the agreed upon amendments presented in the interview. Reconsideration of this application is respectfully requested in view of the foregoing amendment and the following remarks. Claims 9-16, 21-23, 25-42, 44-53, and 55 are currently pending. Claims 9-16, 21-23, 25-42, 44-53, and 55 are rejected. Claims 9, 12, 21, and 25 are amended. Claims 43 and 54 are canceled without prejudice or disclaimer in this response. No new matter has been added.

Double Patenting Rejection

Claims 22, 23, 26-42, 44-53, and 55 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3 and 6 of U.S. Patent No. 6,675,151. Specifically, the Examiner asserts that:

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 22, 23, 26-28, 32, and 36 each contain obvious modifications to claims 3 or 6 of U.S. Patent No. 6,675,151.

As per claims 22, 23, 26-28, 32 and 36 of the instant application, the claims do not recite first receiving absentee information representing absent workers as recited in claims 3 and 6 of U.S. Patent No. 6,675,151, thus making claims 22, 23, 26-28, 32 and 36 broader. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to omit the step of receiving absentee information if the step was not desired or required as part of the overall invention. See MPEP 2144.04, II, A.

Additionally, as per claim 23 of the instant application, the claim replaces the word, Internet, in claim 3 of U.S. Patent No. 6,675,151 for the phrase, instant messaging. It is old and well known in the art that instant messaging is a type of communication able to be performed over a network such as the Internet. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to replace Internet for instant messaging as doing so covers a particular type of communication that uses Internet technology, thus expanding the application of the instant invention.

Additionally, as per claim 27 of the instant application, the claim recites a computer readable medium that essentially performs the steps recited, in claim 3 of U.S. Patent No. 6,675,151. At the time of the invention, it would have been obvious to recite a computer readable medium that performs the steps of a claimed method since doing so simply covers another statutory class.

As per claims 37, 44, 45, 46, 50 and 55 of the instant application, the claims recite similar language as recited in claims 3 and 6 of U.S. Patent No. 6,675,151. However, in claims 37, 44, 45, 46, 50 and 55 of the instant

application, the use of the phrases “first worker” and “second worker” are used in place of the phrases “absent worker” and “substitute worker” as recited in claims 3 and 6 of U.S. Patent No. 6,675,151. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to replace the phrases “absent worker” and “substitute worker” with “first worker” and “second worker,” respectively, as doing so broadens the scope of the type of worker.

Additionally, as per claims 44, 45, 46, 50 and 55 of the instant application, the claims do not recite first receiving absentee information representing absent/first workers as recited in claims 3 and 6 of U.S. Patent No. 6,675,151, thus making claims 44, 45, 46, 50 and 55 broader. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to omit the step of receiving absentee information if the step was not desired or required as part of the overall invention. See MPEP 2144.04, II, A.

Additionally, as per claims 44, 45, 50 and 55 of the instant application, the claims recite a computer readable medium that essentially performs the steps recited in claim 3 of U.S. Patent No. 6,675,151 (minus the differences as noted above). At the time of the invention, it would have been obvious to recite a computer readable medium that performs the steps of a claimed method since doing so simply covers another statutory class.

The undersigned representative acknowledges this rejection and will submit a terminal disclaimer when the present claims are in condition for allowance, if deemed necessary at that time.

Rejection of claims 9-16, 21, 25, 43, and 54 under 35 USC § 102(a)

Claims 9-16, 21, 25, 43, and 54 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Subfinder™ System (“Subfinder”). Specifically, the Examiner asserts that:

As per claim 9, Subfinder discloses a substitute fulfillment system that identifies and secures substitute workers for a plurality of different organizations comprising:

a database comprising worker records, said worker records having information associated with workers for each of the organizations, and substitute records, said substitute records having information associated with at least one substitute worker (reference A, paragraphs 2 and 5; reference D, paragraph 8; Subfinder utilizes a database that contains worker records where the workers are teachers and the worker records include teacher availability, teacher skills and teacher preferences. The teachers are associated with various schools within school districts.);

a server coupled to the database, the server is configured for:

receiving an absentee list of one or more absent workers from an organization via at least one communication link coupled to the server (reference

A, paragraph 2; reference B, paragraph 1; Teachers call into the system and record their absences.);

generating in response to receiving the absentee list one or more lists of one or more potential substitute workers who can fill in for each absent worker on the absentee list using the worker records associated with the absent worker and the substitute records (reference A, paragraph 2; reference B, paragraph 1; For each absent teacher, a list of qualified substitute teachers is generated and each substitute teacher is contacted to fill in for the absent teacher.); and

contacting potential substitute workers listed on each of the generated lists until one of the substitute workers in each of the generated lists agrees to fill in for the absent worker or until all of the generated lists are exhausted (reference A, paragraph 2; reference B, paragraphs 1 and 3; The system automatically contacts substitute teachers on the lists until the absent teacher position is filled or until the system has contacted everyone on the lists.).

Subfinder does not expressly disclose receiving the absentee list from an organization. However, Subfinder does disclose allowing school administrators to call into the system to receive verbal reports of teacher absences and substitute activity (reference A, paragraph 4). Subfinder also discloses its SubFax option in which status reports are automatically broadcast to individual sites daily (reference A, paragraph 9). Thus, the system of Subfinder does send teacher absenteeism reports to individual schools, thereby having the individual schools receive absentee reports from an organization (the organization being wherever the Subfinder database server resides). At the time of the invention, it would have been obvious to a person of ordinary skill in the art for Subfinder to have its system send absentee lists to individual schools because Subfinder already has the functionality to distribute absentee reports to individual schools, because Subfinder already employs the use of lists when it automatically calls substitutes from a substitute list, and furthermore, because lists provide a user-friendly means of presenting information to users.

As per claim 10, Subfinder discloses the substitute fulfillment system of claim 9 wherein each of the least one communication link is a link selected from the group consisting of a telephone communication link or an Internet communication link (reference A, paragraph 2; reference C, paragraph 6; Subfinder uses a telephone communication link to receive absentee information and to contact and secure substitute teachers for the absent positions.).

As per claim 11, Subfinder discloses the substitute fulfillment system of claim 9 wherein the server generates the list of one or more substitute workers using a preferred list of substitute workers associated with the worker record for the absent worker (reference A, paragraph 2; reference B, paragraphs 1 and 3; reference D, paragraph 8; Subfinder generates preferred lists of substitute teachers based on criteria such as substitute teachers the absent teacher has designated and skills/specialties/qualifications of substitute teachers.).

As per claim 12, Subfinder discloses the substitute fulfillment system of claim 9 wherein the server is further configured to generate a list of substitute workers and names of the absent workers who the substitute workers will be

filling in for a given organization and to transmit the generated list of substitute workers and names of the absent workers who the substitute workers will be filling in for to the given organization via the at least one communication link (reference A, paragraphs 4 and 9; Principals and other administrators have the ability to call into the system to receive reports on absentee information as well as substitute teacher information. Reports can also be faxed.).

As per claim 13, Subfinder discloses the substitute fulfillment system of claim 9 further comprising an interactive voice response system controlled by the server for interacting with a potential substitute worker from the generated list of potential substitute workers via at least one telephone communication link whereby the potential substitute worker is secured for filling in for the absent worker (reference B, paragraphs 4-8; Absent and substitute teachers use a combination of voice and telephone number prompts to interact with Subfinder. Absent teachers indicate their absence and any other special messages for the substitute. Substitute teachers indicate a desire to accept or decline a job.).

As per claim 14, Subfinder discloses the substitute fulfillment system of claim 9 wherein the server is further configured to receive a message via the at least one communication link and to forward the received message to the substitute worker who agrees to fill in for the absent worker via the at least one communication link (reference B, paragraphs 4 and 5; Absent teachers may leave messages for substitute teachers via a telephone link.).

As per claim 15, Subfinder discloses the substitute fulfillment system of claim 9 wherein the organizations are unaffiliated (reference B, paragraph 10; Subfinder may be used across multiple school districts, which are not affiliated with each other.).

As per claim 16, Subfinder discloses the substitute fulfillment system of claim 9 wherein the workers are teachers and the substitute workers are substitute teachers (reference B, paragraph 1).

Claims 21, 43 and 54 recite substantially similar subject matter to claim 9 above. Therefore claims 21, 43 and 54 are rejected on the same basis as claim 9 above.

Additionally, with regard to claims 43 and 54, "absent worker" and "substitute worker in Subfinder are considered to be "first worker" and "second worker," respectively, as recited in claims 43 and 54.

In view of the amendments to claims 9, 12, 21, and 25 that were agreed upon in the Examiner Telephone Interview, the rejection of claims 9-16, 21, and 25 has been rendered moot. Regarding the rejection of claims 43 and 54, these claims have been canceled without prejudice or disclaimer solely to expedite prosecution of the allowable claims and have them issue in a patent. However, given that the undersigned representative believes that the rejected claims are patentable over the cited art, the rejected claims may be the subject of a continuation application.

CONCLUSION

The foregoing is submitted as a full and complete Response to the non-final Office Action mailed October 10, 2006, and early and favorable consideration of the claims is requested. If the Examiner believes any informalities remain in the application which may be corrected by Examiner's Amendment, or if there are any other issues which may be resolved by telephone interview, a telephone call to the undersigned attorney at (202)508-5843 is respectfully solicited.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-1458, and please credit any excess fees to such deposit account.

Respectfully submitted,

Dated: January 24, 2007
KILPATRICK STOCKTON LLP
607 14th Street, Suite 900
Washington, DC 20005-2018
Phone 202-508-5800
Fax 202-585-0045

Thomas A. Corrado
Thomas A. Corrado
Attorney for Applicant
Registration No. 42,439